BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

RAYMOND D. CARPENTER AND OTHERS
(Claimants)
(See Appendix)

PRECEDENT
BENEFIT DECISION
No. P-B-110
Case No. 70-4828

S.S.A. No. ... -- -- AND OTHERS
(See Appendix)

BRENT J. ANDERSON
(Claimant)

Case No. 71-766

S.S.A. No.

HENDY INTERNATIONAL COMPANY
(Employer)

Employer Account No.

Prior to the issuance of the referee's decision in Cases Nos. SF-16252, SF-17152 and SF-UCX-2603, we assumed jurisdiction under section 1336 of the Unemployment Insurance Code. The Department's determinations in each of those cases held the claimant disqualified for unemployment insurance benefits under section 1256 of the Unemployment Insurance Code and the employer's account relieved of charges under section 1032 of the code.

Subsequent to the issuance of the referee's decision in Cases Nos. SJ-11061 and SF-15294, we also assumed jurisdiction under section 1336 of the code. The referee's decision in each of the aforementioned cases held that the claimant had good cause for voluntarily leaving work under section 1256 of the code. In Case No. SJ-11061, the referee's decision also held the employer's account not relieved of benefit charges.

These cases have been consolidated for consideration and decision under the provisions of section 5107, Title 22, of the California Administrative Code, it appearing that no right of any party is prejudiced thereby.

STATEMENT OF FACTS

Each of the claimants herein, prior to becoming unemployed, worked for the employer aboard one of its ships. The claimants were all members of the Sailors Union of the Pacific. They sailed under a Class "B" permit. The union rules and collective bargaining agreements to which the union is a party require "B" permit men to leave their ship after 90 days. However, the employer herein was not a signatory to these agreements. Each of the claimants worked for the employer until their 90 days of work were completed. They then left their ships and filed claims for unemployment benefits. In some cases the claimants were told by union patrolmen that their time was up and they had to leave the ship. In other cases the claimants knew that they had worked a total of 90 days and left their work in accordance with their understanding that it was their obligation to leave their work at that time. There is no evidence in any of the cases to show that the employer participated in bringing an end to the claimant's limited employment. Each of the claimants was of the opinion that if they had not left their work at the end of 90 days, they would run the risk of being expelled from the union as most of the work for seamen is controlled by the union.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides that an individual is disqualified for benefits, and sections 1030 and 1032 of the code provide that the employer's reserve account may be relieved of benefit charges if the claimant left his most recent work voluntarily without good cause.

We held in Appeals Board Decision No. P-B-27 that there is good cause for the voluntary leaving of work where the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action.

In a long series of decisions spanning a period of many years this board has given attention to situations involving seamen who leave their vessels either under the terms of a collective bargaining agreement or in obedience to union rules. In Benefit Decision No. 5078, where the leaving was the result of a unilaterally imposed union rule, we held that the claimant's leaving was voluntary and without good cause. In that case the claimant was a permit man required to abide by the rules and regulations laid down by the union membership, one rule requiring that permit men make only one voyage and then leave their ship at the conclusion of the voyage so that jobs might be rotated among the union membership in order to keep the majority of the permit men employed. This rule was not mentioned in the collective bargaining agreement and the agreement disclosed no intention of the employer to recognize or be bound by the rule.

In reviewing that portion of the predecessor provision to what is now section 1256 of the code and the language of the legislature in dealing with claimants who voluntarily leave their employment without good cause, this board recognized the public policy set forth in the first section of the act (now section 100 of the code) that benefits be paid to unemployed persons who are unemployed "through no fault of their own." We stated in Benefit Decision No. 5078:

> "A suspension of benefits under Section 58(a)(1) can be supported only if a claimant left his most recent work, did so voluntarily, and acted without good cause in so doing. In Matter of Rumore, Benefit Decision 4709, a case involving a seafaring claimant who left his work under somewhat the same conditions as are here presented, we said: 'It would be anomalous to say that an independent agency can terminate an employee without any act on the part of the employer to bring about such a result.' In Matter of Nelidov, Benefit Decision 4725, a similar case, we said: 'If the claimant had been removed from the ship by his union . . . such act cannot be deemed to be a termination of his employment by his employer.' The record in the instant case

shows that the appellant took no action respecting the claimant's severance from work suggestive of a termination at its instance. The claimant's services were satisfactory; he was neither laid off, dismissed, nor discharged; the vacancy left by him was filled by a replacement provided by the Union, and the ship shortly sailed on another voyage with the claimant's replacement aboard. In paying the claimant off, the appellant merely accepted, without acquiescing in, the situation created by the claimant when he elected to leave the ship in compliance with the union's one-voyage rule. The implication is clear that continuing employment on the CHANNING was available to the claimant and that he could have remained at work on that ship had he chosen to do so.

"Section 2(c) of the collective bargaining agreement heretofore mentioned gave to the appellant a right to retain the claimant in employment at the conclusion of the voyage in issue, and to the claimant a right to remain in such employment. This provision of the agreement by its terms becomes operative if and when both the employer and the employee 'desire' employment to continue. There is nothing in the record tending to show that the appellant was unwilling to allow the claimant to continue in employment; the evidence points rather to the contrary. On the other hand, the record does show that the claimant would not and did not ship over on the CHANNING for the sole reason that to do so would violate the aforesaid union rule. The claimant, by failing or refusing to exercise his contractual right to remain in the appellant's employ, elected to separate himself from employment and therefore left his work voluntarily within the meaning of Section 58(a)(1) of the Act. (Bodinson Manufacturing Company v. C.E.C., 17 Cal. (2d) 321.)"

We noted that the volitional test of Bodinson Manufacturing Company v. C.E.C., 17 Cal. (2d) 321 applied to the claimant since he himself elected to separate

himself from his employment. We went on to state that we recognized a claimant in such circumstances was caught between Scylla and Charybis - he risked the loss of unemployment insurance benefits or risked the loss of returning to gainful employment in the future if he refused to obey the unilateral rule - but stated:

> ". . . We have no authority to, nor do we pass upon the propriety of the union rule. It may be properly assumed, however, that the union had the right to make and to enforce the rule within its membership, and that the claimant was within his legal rights in observing it. Neither do we consider nor pass upon the propriety of the objective of the rule, though it may be observed in passing that a 'spread-the-work' program is not necessarily an 'employment stabilization' program (see Section 1 of the Act). As was pointed out in Barclay-White v. Board of Review, supra, 'while the legislature (in passing the Pennsylvania Unemployment Insurance Act) indicated a sympathetic and proper respect for labor organizations, the purpose of the Act was not to further their objectives as such. The Act stands impartial between organized labor and industry in the evolution of their relations one with the other . . .' (See also Matson Terminals v. C.E.C. 24, Cal. (2d) 695 and Grace and Company v. C.E.C. 24 Cal. (2d) 720)

> "The standards which determine eligibility and disqualification for benefits are those set forth in the Act and none other. The Legislature alone has the power to establish these standards, and they may not be varied by private action, rule or agreement. 'Nothing in the Act suggests that a union or a group of employers or anyone else may add to or subtract from the standards laid down in the Act itself . . . A group of individuals cannot secure higher privileges merely by adopting a rule which binds them to a certain course of conduct' (Bigger v. Delaware U.C.C. (Del.) 46 Atl. (2d) 137). In Bodinson Manufacturing Company v. C.E.C., supra, it was urged that the crossing

> of the picket lines would have jeopardized future employment by exposing workers who did so to expulsion from their unions. It is contended in the instant case that the loss of future employment would have been a very real prospect should the claimant have remained in employment. Yet the California Court, in a decision which this Board has consistently followed, found this plea no barrier to a denial of benefits. The Court thus recognized what has been called 'an economic fact of life', but held in effect that it did not control over legislative standards for determining eligibility to benefits. It is a fair assumption that the Court meant by this holding that, however legitimate and effective an 'economic fact of life' might be in its proper sphere, it had no application in the field of unemployment insurance where its affect was to nullify a positive legislative declaration relating to benefit eligibility."

One of the more recent decisions of this board holding that where the leaving of work is the result of a rule jointly promulgated by the union and the employer there is an involuntary separation which does not subject the claimant to disqualification under section 1256 of the code, is Benefit Decision No. 6613. This case sets forth the historical antecedents to the rotational rule which results in the spreading of available work to the maximum number of seamen and reasons that when the employer has entered into an actual agreement rather than mere acquiescence with the rule and in so doing takes an affirmative role in bringing about the claimant's separation from employment then the claimant has left work involuntarily although the initial reason for the rule may be the same in both instances. The rationale is well stated in the following quotation from an earlier case (Benefit Decision No. 6590):

> "The collective bargaining agreement is equally binding upon both of the parties herein (Barber v. California Employment Stabilization Commission, et al. (1954) (hearing denied February 24, 1955) 130 Cal.

App. 2d 7, 278 P. 2d 762). We must therefore consider the pertinent provisions of the agreement in order to determine the category within which the claimant's separation from work falls. Under the terms of the contract, the claimant agreed to furnish his services to the employer for a limited time; and the employer agreed to provide work for the claimant for the same limited time. Neither party could do more without violating the terms of the collective bargaining agreement. Under these circumstances, we conclude that the employment relationship simply ended in accordance with the terms of the agreement. Since there was no leaving of work voluntarily without good cause, and no discharge for misconduct connected with the work, section 1256 of the code is not applicable. The same conclusion applies to section 1030 of the code (Ruling Decisions Nos. 1 and 13). Therefore, the employer's account may not be relieved of charges under section 1032 of the code."

In Benefit Decision No. 6613 this board was supported in its conclusion by the then recently handed down decision in Douglas Aircraft Company, Inc. v. California Unemployment Insurance Appeals Board, et al., 4 Cal. Repr. 723; and, in quoting with approval from the Douglas decision, we held that an employee could not be deprived of a statutory right to unemployment compensation benefits merely because a collective bargaining agreement enforced a bilateral rule that the claimant would be separated from employment by a certain date. Though noting certain factual distinctions between Douglas and Benefit Decision No. 6590, we found the legal conclusions in Douglas were applicable to the case then before it.

Courts in other jurisdictions have denied claimants compensation when their unemployment was due to a unilaterally imposed work rule. (See Anson v. Fisher Amusement Corporation (1958), 254 Minn., 93, 93 NW 2nd 815; Blakeslee v. Admin. Unemployment Compensation Act, 25 Conn. Supp. 290; 203 A. 2d 119 (Sup. Ct. 1964)) One of the more recent cases in California which dealt with the problem of a bilateral work rule where the union

and the employers were signatory to an agreement that the seamen would leave work after a certain period of time was considered in Pacific Maritime Association v. California Unemployment Insurance Appeals Board (1965), 236 Cal. App. 2d 325, 45 Cal. Rptr. 892. The court in that case read the Douglas case as establishing a precedent that in all cases of unemployment due to a collective bargaining agreement, the only relevant factor is whether the employee wanted to continue working. The court looked into the circumstances at the time of leaving and considered whether the claimant desired to continue working and could have done so except for the collective bargaining agreement.

The claimants herein took work whereby they were required to accept the unilaterally imposed work rule that at the completion of 90 days of employment, they would no longer be entitled to ship on the employer's vessels. The employer did not agree to such an arrangement. In such a situation the claimants are bound to accept the disadvantages as well as the advantages of union membership. Therefore, what at first appears to be termination of employment without exercise by the claimants of their own volition is no more than the result of a voluntary act upon the part of the claimants, when they knowingly enter into the employment relationship on that basis.

The "factual matrix" test used in the Douglas and Pacific Maritime Association cases comes into play in the unilaterally imposed work rule situation. However, the employer does not participate or formally agree to the severance of the employment relationship. Each of the claimants herein could theoretically have remained on board ship except for their obedience to the rule imposed by the union. Their leaving was voluntary. The issue is whether they left with good cause.

Good cause depends upon compelling reasons for leaving employment, reasons which may and often are extraneous to the actual work environment. The compulsion of no further dispatch is a formidable reason

for leaving work, of this we have no doubt. But just as the desperately ill claimant who is unable to continue work and who leaves on advice of his physician may be disqualified for benefits because he does not request an available leave of absence - a condition subsequent, in effect, which negates "good cause" and bars recovery - so too in the present cases where as a condition precedent the claimants took work voluntarily, they accepted the conditions of employment voluntarily and then left work voluntarily, they must subsequently be denied benefits. Other well-known illustrations might be cited to buttress this point. The analogy used is sufficient. The test is clear:

> "Section 100 of the California Unemployment Insurance Code provides, in part, 'for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own. . . .' (Emphasis added.) This is not a mere preamble to the code section. It is an integral part of it. This is declared by the legislature to be 'a guide to the interpretation and application' of the code provisions covering unemployment benefits, and a part of the 'public policy of this State' in such matters. It is therefore established that fault is a basic element to be considered in interpreting and applying the code sections on unemployment compensation." (See Sherman/Bertram, Inc. v. California Dept. of Employment (1961), 202 C.A. 2d 733, 21 Cal. Rptr. 130)

We hold that the claimants in each of the cases herein voluntarily left their most recent work without good cause.

DECISION

The Department's determinations and rulings in Cases Nos. SF-16252, SF-17152 and SF-UCX-2603 are affirmed. The claimants are disqualified for benefits under section 1256 of the code and the employer's account is relieved of benefit charges. The referee's decision in Case No. SJ-11061 is reversed. The claimant is disqualified for benefits under section 1256 of the code and the employer's account is relieved of charges. The referee's decision in Case No. SF-15294 is reversed. The claimant is disqualified for benefits under section 1256 of the code.

Sacramento, California, July 20, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

DON BLEWETT

CARL A. BRITSCHGI

APPENDIX

NAME AND ADDRESS OF CLAIMANTS	SSA NO. LOCAL OFFICE BYB DATE
CARPENTER, Raymond D.	037-03290
DYER, Charles H.	037-01180
O'CONNOR, Dennis J.	037-11239
PARDO, Edward Jr.	085-05310

* * *

ANDERSON, Brent J.	037-05260